

DEWEY PICKETT

JANUARY 29, 1951.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 243]

The Committee on the Judiciary, to which was referred the bill (S. 243) for the relief of Dewey Pickett having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the bill is to provide for the payment of the sum of \$5,000 to Dewey Pickett of Orlando, Fla., in full settlement of all claims against the United States arising out of injuries sustained by him as a result of being hit by the backlash of an Army airfield fence which was crashed into by an Army airplane.

STATEMENT

On June 5, 1943, at about 2:15 p. m., an Army airplane, piloted by a commissioned officer, in attempting to take off on an authorized mission, crashed into a boundary fence of the air base at Orlando. The crash was the result of a sudden and unexplained loss of power in one or both of the engines of the plane which prevented it from leaving the ground. After crashing into the fence the plane struck and destroyed three houses. Four persons were instantly killed when the plane struck the houses and two others were seriously injured. Mr. Dewey Pickett, an employee of the post exchange at the air base, was injured when the fence surrounding the airfield was thrown against him by the crash of the plane. He suffered abrasions of the forehead, bridge of the nose, both knees and left elbow, and a ragged laceration about 1 inch in length on the vertex of the scalp. X-rays of the left shoulder and knee were taken and a fracture of the left patella was discovered.

The claimant was examined on October 6, 1950, by an Army physician who determined that Mr. Pickett had a 50-percent disability in his left knee and left shoulder as a result of the accident. The claimant, in his affidavit, states that the injury to his knee necessitated the placing of a cast upon the knee which was not removed for 6 weeks. He also states that he suffered 8 weeks loss of time and salary amounting approximately to \$300, as well as medical bills amounting to \$525 and damage to his clothing in the amount of \$25.

The Department of the Army states that it has no objection to the enactment of the bill and the Department of Justice concurs in that view.

The committee is of the opinion that inasmuch as the claimant suffered injuries because of the mechanical failure of a conveyance under the control of an agency of the United States Government, the claimant should be compensated for his injury and resulting disability. The committee wishes to point out the existence of the precedent in the form of Private Law 566 of the Seventy-eighth Congress which provided for the payment of a sum of \$5,585 to the widow of one of the persons killed in this same accident.

Attached to and made a part of this report are the reports of the Department of the Army and the Department of Justice on an identical bill (S. 3831) of the Eighty-first Congress and the affidavit of the claimant submitted in support of the above-mentioned bill from the Eighty-first Congress.

DEPARTMENT OF THE ARMY,
Washington, D. C., November 1, 1950.

The honorable the ATTORNEY GENERAL,
Washington, D. C.

DEAR MR. ATTORNEY GENERAL: Reference is made to your letter with which you enclosed a copy of S. 3831, Eighty-first Congress, a bill for the relief of Dewey Pickett. You state that the Senate Committee on the Judiciary has requested the Department of Justice to submit a report on this bill and has advised that if reports are necessary from other sources they will be secured by your Department and submitted along with your report to the committee. You, therefore, request the comments of the Department of the Army on S. 3831.

This bill provides as follows:

"That the Secretary of the Treasury is hereby authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Dewey Pickett, of 1425 East Hamlin Street, Orlando, Florida, the sum of \$5,000. Payment of such sum shall be in full settlement of all claims of the said Dewey Pickett against the United States arising out of injuries sustained by him as the result of being hit by the backlash of an Army airfield fence which was crashed into by an Army airplane which failed to gain sufficient speed to leave the ground in a take-off attempt at the Army airfield at Orlando, Florida, on June 5, 1943."

The records of the Department of the Army show that on June 5, 1943, at about 2:15 p. m., an Army airplane, piloted by a commissioned officer, in attempting to take off on an authorized mission crashed, through a boundary fence of the Army airfield at Orlando, Fla., when a sudden and unexplained loss of power in one or both of the engines of the plane prevented it from leaving the ground. After crashing through the fence the plane struck and destroyed three houses. The plane caught on fire in the crash, but the pilot escaped from the plane. Four persons were instantly killed when the plane struck the houses and two others were seriously injured. Mr. Dewey Pickett, an employee of the post exchange at the Orlando Army Airfield, was injured when the fence of the airfield was thrown against him by the crash of the plane.

The report of the claims officer who investigated this accident reads, in pertinent part, as follows:

"On 5 June 1943, at 1409 E (2:09 p. m.), a P-38G-15 type aircraft, serial No. 43-2297, piloted by 2d Lt. Ellis I. DeGroff (O792969) was involved in an aircraft

accident when his aircraft failed to take off to the west, in its take-off roll at about 100 miles per hour, on the southernmost east-west runway of the AAFSAT Air Base Airdrome. The aircraft crashed through the boundary fence at the western end of said runway, crossed a road and crashed into a house about 100 feet from said boundary fence, and after running completely through the first house, ran through a second house at the rear of the first. Said aircraft then burst into flames and, in addition to destroying the aforesaid two houses, also burned a third house beyond repair. The pilot escaped from the burning wreckage with second- and third-degree burns of the neck and arms. Four civilians were killed and injured in said accident. The cause of the accident was due to power plant failure, which prevented said aircraft from taking off the ground after a take-off roll of about 5,300 feet."

On July 14, 1943, Capt. Curtis F. Culp, Medical Corps, United States Army, out-patient department of the station hospital, Army Air Forces School of Applied Tactics, Orlando, Fla., executed the following certificate:

"This is to certify that at about 2:30 p. m. on June 5, 1943, Mr. Dewey Pickett, a civilian, was admitted to the hospital, Army Air Forces School of Applied Tactics, Orange County, Fla., and he was suffering from the following injuries: Abrasions of the forehead, bridge of the nose, both knees and left elbow; a ragged laceration about 1 inch in length on the vertex of the scalp, which was closed with one suture and sulfanilamide powder inserted. There was also a small and superficial abrasion on the right hand.

"X-rays of the left shoulder and left knee were taken and a fracture of the left patella was noted, for which he was sent to a family physician of his choice, for treatment."

On September 29, 1943, Dr. Duncan McEwan, of Orlando, Fla., made the following sworn statement concerning his treatment of Mr. Pickett after the accident of June 5, 1943:

"He (Dewey Pickett) had an incomplete fracture of the lower end of the patella with a slight swelling and tenderness over this area. His knee was placed in a plaster cast. He complained of a great deal of pain in his shoulder but X-ray was negative for fracture. His arm was placed in a sling.

"At the present time the patient still has occasional catch in his knee when climbing stairs and also occasional catch in his left shoulder when raising it. There is a very slight swelling of the knee joint.

"He also states that since his accident he has been in a highly nervous state and unable to concentrate well. It is impossible to state definitely whether or not there will be permanent injury. At the present I would estimate he has 5 percent permanent disability of his knee and left shoulder. It is difficult to estimate the percentage of nervous shock."

On July 12, 1950, Dr. Richard H. Walker, of Orlando, examined Mr. Pickett. On August 3, 1950, Dr. Walker submitted a report of his examination which reads, in pertinent part, as follows:

"Since the accident, the patient has continued at times to have some pain in the knee and also in the shoulder. He states that the knee catches at times and also that it swells. In the shoulder he has a dull ache in the evenings and at times he seems to have some feeling of weakness in the arm and some limitation of motion. As long as he follows a regular routine, he seems to get along very well, but any strenuous work or much walking up or down stairs does cause the knee to be painful.

"Examination: On inspection of both shoulders, there is some atrophy of the deltoid as well as the pectoralis major on the right with an undue prominence of the head of the left humerus with definite restrictive motion, and I feel there is a forward subluxation of the head of the humerus. This subluxation does definitely cause the patient to have rather marked disability in the shoulder accompanied by more or less continuous pain and particularly pain after motion of the shoulder joint.

"On inspection of both knees, there is some swelling in the left accompanied by a definite wasting of the quadriceps. Although the patient extends the knee to 180 degrees and flexes it to 65 degrees, this is done with a definite effort. Also, there is some distention of the superficial vessels on the thigh particularly on its inner aspect. There is a scar on the anterior aspect of the thigh, left, which occurred as a result of the accident. The stability of the joint is good. I can definitely feel an area of separation, which probably represents the fracture line and runs transversely across the patella. The feeling of weakness in the knee and an inability to walk up and down stairs is characteristic following a fracture of the patella.

"X-ray examination: Anteroposterior view of the left shoulder in external and internal rotation reveal, in the internal rotation position, there is a definite tendency toward subluxation of the shoulder. In the external position the shoulder is normal.

"AP and lateral views of the left knee fail to reveal any evidence of disease. There is still a distinct line through the patella which represents the residuals of the fracture.

"It is my opinion, at this time, that the patient has approximately a 50-percent disability in the shoulder and approximately the same amount of disability in the left knee."

On October 6, 1950, Mr. Pickett was examined at the base hospital, MacDill Air Force Base, Fla., by Capt. Raymond Menendez, an Air Force medical officer, and the report of such examination shows that Mr. Pickett has a 50-percent disability in his left knee and left shoulder.

At the time of his injury in the accident of June 5, 1943, Mr. Pickett was earning approximately \$150 per month as a clothing salesman at the post exchange at the Orlando Army Airfield. His employer paid him his wages in the amount of \$150 for 1 month following the accident. Mr. Pickett lost approximately \$150 in wages on account of his injury. He sustained damage to his clothing in the accident in the amount of \$10.45. It appears that up to October 12, 1943, the claimant had incurred medical expenses on account of his injury in the amount of \$25.50. The Department of the Army has no information as to any medical expenses incurred by the claimant since that time. No insurance or other compensation benefits have been received by the claimant on account of his injury on June 5, 1943. The claimant is not entitled to compensation under the United States Employees' Compensation Act of September 7, 1916 (39 Stat. 742; 5 U. S. C. 751), as amended, for the reason that he was not at the time of his injury an employee of the United States within the meaning and purview of said statute. Even if the claimant had been an employee of the United States within the meaning and purview of the United States Employees' Compensation Act, as amended, at the time of his injury, he still would not be entitled to compensation under that statute for the reason that he was not at such time engaged in the performance of his duty as clothing salesman at the post exchange.

The claimant is now 46 years of age and he has a wife, 28 years of age, and a son, 7 years of age, who are dependent upon him for their support.

The evidence in this case establishes that the accident in which Mr. Pickett was injured was not caused by any fault or negligence on his part, but resulted solely from engine failure of an Army airplane. The United States, therefore, may properly assume liability for the damages sustained by Mr. Pickett. Considering the age, occupation and earnings of Mr. Pickett at the time of his injury, the nature of the injuries sustained by him, which have resulted in a substantial degree of permanent disability, the pain and suffering which he has undergone, the property damage sustained and medical expenses incurred, and the fact that he has a wife and one minor child dependent upon him for their support, it is the view of the Department of the Army that the proposed award of \$5,000 provided in this bill would constitute a fair and reasonable settlement for all of the damages sustained by the claimant as a result of this accident. The Department, accordingly, has no objection to the enactment of the bill.

The claimant has no remedy under the Federal Tort Claims Act (60 Stat. 843; 28 U. S. C. 931), as revised and codified by the act of June 25, 1948 (62 Stat. 933; 28 U. S. C. 1346 (b)), and as amended by the act of April 25, 1949 (63 Stat. 62), for the reason that the accident out of which his claim arises occurred prior to January 1, 1945, the effective date of said act.

Sincerely yours,

FRANK PACE, Jr.,
Secretary of the Army

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, December 20, 1950.

Hon. PAT MCCARRAN,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 3831) for the relief of Dewey Pickett.

The bill would provide for payment of the sum of \$5,000 to Dewey Pickett, of Orlando, Fla., in full settlement of all claims against the United States arising out of injuries sustained by him as a result of being hit by the backlash of an Army airfield fence which was crashed into by an Army airplane.

In compliance with your request, a report was obtained from the Department of the Army concerning this legislation. According to that report, which is enclosed, it appears that on June 5, 1943, an Army airplane piloted by a commissioned officer on an authorized mission crashed through a boundary fence of the Army airfield at Orlando, Fla., during a take-off when a sudden and unexplained loss of power in one or both of the engines of the plane prevented it from leaving the ground. Claimant, an employee of the post exchange at the airfield, was injured when the fence of the airfield was thrown against him by the crash of the plane. In addition to lacerations and abrasions, claimant suffered a fracture of the left knee and an injured shoulder. The X-rays indicated no fracture of the shoulder, however. According to the last medical examination given claimant by his personal physician, he continues at times to have some pain in the knee and in the shoulder. A physical examination given him by Army doctors showed that he has a 50 percent disability in his left knee and left shoulder.

At the time of the injury claimant was earning about \$150 per month as a clothing salesman at the post exchange. As the result of the accident he lost approximately \$150 in wages, sustained damage to his clothing in the amount of \$10.45, and up to October 12, 1943, had incurred medical expenses in the amount of \$25.50. The Department of the Army states it has no information as to any medical expense incurred by claimant since that time. He has received no insurance or other compensation benefits and is not entitled to compensation under the United States Employees' Compensation Act, for the reason that he was not at the time of his injury an employee of the United States within the meaning and purview of the statute. Claimant is 46 years of age and has a wife and minor son dependent upon him for support.

The Department of the Army states that the evidence in this case establishes that the accident was not caused by any fault or negligence on claimant's part, but resulted solely from engine failure of an Army airplane and that the United States therefore may properly assume liability for the damages sustained by claimant. It states that in view of all of the circumstances, it considers the proposed award of \$5,000 to be a fair and reasonable settlement for all of the damages sustained by him. The Department of the Army states that accordingly, it has no objection to the enactment of the bill.

The Department of Justice concurs in the views of the Department of the Army. The Director of the Bureau of the Budget has advised this Office that there would be no objection to the submission of this report.

Yours sincerely,

PEYTON FORD,
Deputy Attorney General.

STATE OF FLORIDA,
County of Orange, ss:

Personally appeared before me a duly authorized officer of the law empowered to administer oaths and take acknowledgments, Dewey Pickett, who first being duly sworn, deposes and says:

That he is a citizen and resident of Orange County, Fla., and that on June 5, 1943, while affiant was employed at the Orlando Air Base that he had started from his place of employment to obtain his lunch during regular lunch hour and while he was walking upon Robinson Avenue in the direction of Crystal Lake Drive he met up with a Mr. Foreman from Winter Garden, Fla., at approximately the corner of Robinson Avenue and Crystal Lake Drive and the two engaged in a conversation relative to a position which Mr. Foreman was seeking. In the meantime affiant and the said Mr. Foreman started walking south on Crystal Lake Drive and directly in front of the air base located at Orlando, Fla.; that after the two parties had walked a few blocks together affiant looked upward across the east-west runway of the airport and saw an Army fighter plane of the United States Army, known as a P-38, coming across the field. Affiant then touched Mr. Foreman on his shoulder and shouted to him to look out and run, that apparently the plane was not going to leave the ground; affiant then ran north on Crystal Lake Drive and during the immediate period which ensued the plane came through the fence and crossed Crystal Lake Drive crashing into a house and then into a large tree in the rear of the yard.

Several people in the house were killed or injured and Mr. Foreman was knocked down and killed by the plane and while affiant did everything he could to avoid the plane he nevertheless was struck and knocked face down and dragged some distance but miraculously managed to get out from under the fence with which he had become entangled, and raising up observed that Mr. Foreman was lying on the ground and had been killed. Affiant was then carried to the hospital at the airbase for first aid where stitches were taken in affiant's head and where it was determined that he had injuries to his left knee and shoulder. Since affiant was a civilian employee the hospital authorities at the base referred affiant to Dr. Richard H. Walker, Jr., of Orlando, Fla., a bone specialist, but at the particular time Dr. Walker was not in the city and affiant then went to Dr. Duncan McEwan, also of Orlando, Fla., who treated him temporarily for his injuries; that affiant's knee and leg were put in a cast which was kept on for a period of 6 weeks; that a sling was placed around affiant's arm and shoulder; affiant suffered 8 weeks' loss of time and salary of approximately \$300 at this time before he was able to return to his duties. Affiant further suffered damage to his clothing at the time of his accident amounting to \$25 and doctors' bills and medical treatment of \$225, and since the time of the removal of the cast and sling that affiant has spent approximately \$300 for doctors' bills and medicines in an effort to furnish relief from the pain and suffering which ensued.

Affiant further states that he has continuously since the accident suffered pain in his knee and shoulder and has been handicapped in undertaking to carry on his usual activities and work; that affiant is unable to stand upon his left leg without suffering pain and that it often swells and that there is a constant dull ache which increases particularly in the evenings and that there is a feeling of weakness in his arm and a limitation of motion; that so long as affiant refrains from walking up or down stairs that his knee is less painful but increases with any effort to walk up or downstairs; that affiant has extreme difficulty in lifting any heavy articles or in casting with rod and reel; that these conditions did not exist prior to the accident and appear to be permanent; that affiant finds himself unable to work with the same degree of efficiency as he did prior to the accident and feels that he has been permanently injured to the extent of 50 percent of his normal capacity to work and earn a livelihood and that these injuries are permanent.

Affiant further states that he understands Rosa Lee Foreman (widow of the aforesaid Foreman) received \$5,000 by special act of Congress and that the estates of some of the deceased persons received \$5,000, and that certain of the other injured persons received \$4,000, the names of these being unknown to affiant.

[SEAL]

DEWEY PICKETT,

Sworn to and subscribed before me this 11th day of August A. D. 1950.

ISABELLE H. MANTEY,
Notary Public.

My commission expires October 10, 1953.

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